Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JOSEPH STAHULAK,

Petitioner,

v.

THE CITY OF CHICAGO;
THE CHICAGO FIRE DEPARTMENT;
and RAYMOND E. OROZCO,
Fire Commissioner of the City of Chicago,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the petitioner, Joseph Stahulak, as a member of the Chicago Firefighters Union, Local No. 2, International Association of Firefighters, AFL-CIO-CIC, have standing to sue the respondent, the City of Chicago, for the purpose of vacating an arbitrator's award?

PARTIES TO THE PROCEEDINGS BELOW

Joseph Stahulak, petitioner here, was the appellee and appellant below;

The City of Chicago, The City of Chicago Fire Department, and Raymond E. Orozco, respondents here, were the appellants and appellees below;

Chicago Firefighters Union, Local No. 2, International Association of Firefighters, AFL-CIO-CIC, was the defendant below.

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PETITION FOR WRIT OF CERTIORARI

The petitioner respectfully requests this Court to issue a Writ of Certiorari to the Supreme Court of Illinois, to review that Court's decision and opinion entered on September 24, 1998 (App. A), with a subsequent denial of Petition for Rehearing on November 30, 1998 (App. B).

OPINIONS BELOW

On September 24, 1998, the Supreme Court of Illinois affirmed the decision of the Appellate Court of Illinois, First District (App. C), reversing the Circuit Court of Cook County's decision that the petitioner, Joseph Stahulak, did not have standing to sue the respondent, the City of Chicago, for the purpose of vacating an arbitrator's award, with the Illinois Supreme Court holding that only the union could maintain such a cause of action as it would be the only proper party to represent the petitioner based upon the collective bargaining agreement between the union and the City of Chicago relative to the firefighter-city collective bargaining agreement (App. A).

On November 30, 1998, the Supreme Court of Illinois denied a Petition for Rehearing (App. B).

JURISDICTION

1. The decision of the Supreme Court of Illinois was entered on September 24, 1998.

2. The Petition for Rehearing was denied by the Supreme Court of Illinois on November 30, 1998.

3. The Petition for Writ of Certiorari was filed less than 90 days from the denial of the Petition for Rehearing by the Supreme Court of Illinois on November 30, 1998.

4. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grant Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy or life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Statement of Undisputed Facts

Prior to November 16, 1991, the date of the petitioner's discharge, the collective bargaining agreement between the Chicago Fire Fighters Union, Local #2, International Association of Fire Fighters, AFL-CIO-CIC, and the City of Chicago, Illinois, Section 16.2, entitled Discipline and Discharge (C168-169), provided as follows:

> Section 16.2 Discipline and Discharge
>
> E. The Employer shall conduct disciplinary investigations when it receives complaints or has reason to believe an employee has failed to fulfill his responsibilities as an employee and just cause for discipline exists. It is understood that polygraph examinations will not be used by the Employer in any phase of disciplinary investigations.
>
> Prior to taking any final, disciplinary action and concluding its investigation, the Employer shall notify the employee of the contemplated measure of discipline to be imposed, and shall meet with the employee involved and inform him/her of the reasons for such contemplated disciplinary action. Copies of the following documents shall be given to the employee at this notification and review meeting:
>
> 1. Allegation of violations of Rules & Regulations
> 2. Statement of charges and specifications
> 3. Employee's initial statement of facts
> 4. Acknowledgment of notification and review
> 5. Disciplinary officer's recommendation
> 6. Copies of the employee's pertinent past discipline

> The employee shall be entitled to Union representation at such meetings and shall be given the opportunity to rebut the reasons for such proposed discipline.

On January 28, 1993, arbitrator Alex Elson issued an award, providing among other things, specifically paragraph 2, that the petitioner, Joseph Stahulak, was to be reinstated as a probationary firefighter for the purpose of enabling him to receive the safeguards of §16.2 of the collective bargaining agreement. (C169-170, C190)

In paragraph 2 of the award, it was further provided that the expiration of the probationary period for Joseph Stahulak was to be stayed until the final action of the Department. (C214)

Pursuant to 710 ILCS 5/12, vacating an award, the Court has the power to vacate an award if the arbitrator has exceeded his powers. (C170)

Subsequent to the entry of the award, the petitioner was placed on administrative leave with pay pursuant to a memorandum directed to him from Charles Stewart III, Assistant Director of Personnel, Exhibit C herein, which provided that he was to be on administrative leave as of March 1, 1993, with pay until further notice. (C170, C215)

On March 15, 1993, the petitioner, Joseph Stahulak, was paid for a period covering March 1, 1993 to March 15, 1993, and on March 31, 1993, he was paid covering a period from March 15, 1993 until March 29, 1993; said payroll stubs marked Group Exhibit D herein. (C170, C36-37)

On March 29, 1993, the petitioner was discharged from the Chicago, Illinois, Fire Department; a copy of

said discharge dated March 29, 1993, marked Exhibit F herein. (C170, C218)

Statement of Disputed Facts

On November 16, 1991, the petitioner, Joseph Stahulak, was discharged as a probationary firefighter for violating the City of Chicago's residency requirement in that he did not reside within the City of Chicago, which allegation the petitioner denies in his affidavit attached as Exhibit I. (C168, C228)

The petitioner could not be discharged as a probationary firefighter without proper procedural due process. (C171)

The arbitrator, Alex Elson, exceeded his power by staying probationary period for Joseph Stahulak in conjunction with his reinstatement of Joseph Stahulak to the position of probationary firefighter for the purpose of enabling the City of Chicago Fire Department to comply with the proper procedural due process as provided in Section 16.2 of the collective bargaining agreement between the Chicago Fire Fighters Union, Local #2, International Association of Fire Fighters, AFL-CIO-CIC, and the City of Chicago, Illinois. (C171)

When the petitioner, Joseph Stahulak, was placed on administrative leave on March 1, 1993, he lacked two weeks of achieving the status of a non-probationary firefighter. (C171)

As a non-probationary firefighter, the petitioner could not be discharged unless he was provided the grievance procedure, including arbitration challenging the discharge as to whether just cause existed for termination,

per the collective bargaining agreement, Article XVI, General Provisions, §16.2, paragraphs A and B, Exhibit E herein. (C171, C217)

The paid administrative leave for the month of March, 1993, resulted in the petitioner achieving the status of a non-probationary firefighter. (C171)

As a non-probationary firefighter, the petitioner could not be discharged without being afforded the grievance procedure as required by the collective bargaining agreement. (C171-172)

REASON FOR GRANTING THE WRIT

THE PETITIONER, JOSEPH STAHULAK, AS A MEMBER OF THE CHICAGO FIREFIGHTERS UNION, LOCAL NO. 2, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO-CIC, DOES HAVE STANDING TO SUE THE RESPONDENT, THE CITY OF CHICAGO, FOR THE PURPOSE VACATING AN ARBITRATOR'S AWARD.

In this petition for writ of certiorari, Joseph Stahulak, the petitioner, requests the United States Supreme Court to consider addressing the issue of whether the petitioner has standing to maintain a cause of action against the City of Chicago if the union declines to represent a union member because of merit and monetary considerations.

In the record and briefs that were filed in the Supreme Court of Illinois, there was reference to the issue in the appellate court opinion of *Svoboda v. Department of Mental Health*, 162 Ill.App.3d 366 (1987), at 373, wherein the *Svoboda* appellate court ruled that it was not required to allege and prove that a union did not

fairly represent the union member in prior grievance proceedings as in many cases the union may give fair and adequate representation during the arbitration process, but declines to represent the petitioner in vacating the arbitration award because of merit and monetary considerations.

Relative to the *Svoboda* appellate court observations at 373, the *Svoboda* appellate court, at 371-372, stated:

> The above cases thus indicate that Federal courts have recognized that individual employees have standing to bring a suit to vacate an arbitrator's award. Yet, at the same time, the above cases also indicate that Federal decisions have placed upon employees the requirement of alleging and providing that the union did not fairly represent the employee at earlier stages. We agree with the Federal courts in recognizing that an individual has standing to bring suit to vacate an arbitrator's award, but we decline to encumber such right with the burden of alleging and proving that the union did not adequately represent the employee at earlier stages. In this regard, we first note that the Supreme Court has not addressed the same factual situation that we now decide. In *Vaca*, the Court was presented with an individual who had not exhausted the contractual grievance procedures, and, in *Hines*, the Court was presented with the issue of the effect of the term "final and binding." In the present case, plaintiffs need not allege that the union breached its duty of fair representation in order that they may get around a defense that they did not exhaust the contractual grievance procedures (see *Vaca v. Sipes* (1967), 386 U.S. 171, 17 L.Ed.2d 842, 87 S.Ct. 903), because, in the present case, plaintiffs did exhaust their contractual grievance procedures. And, in the present case,

> AFSCME, unlike the union in *Vaca*, is not vested with the sole power to invoke the higher stages of the grievance procedure, as section 6(b) clearly gives employees the right to institute grievance procedures on their own. Ill. Rev. Stat. 1985, ch. 48, par. 1606(b).

Since the petitioner had exhausted his remedies via the arbitrator's award, the petitioner has the right to file the petition to vacate the arbitrator's award on the basis that the union collective bargaining agreement does not give the union the exclusive right to seek judicial review to vacate such an award, nor is the petitioner prevented to have an individual access to the remedy that he is seeking wherein he has a personal stake in the arbitrator's award; that is, his job.

To support the *Svoboda* appellate court reasoning as to the above-stated issue, the court referred to the dissenting opinion of Justice Black as found in *Vaca v. Sipes*, 386 U.S. 171, 205, 17 L.Ed. 842, 866, 87 S.Ct. 903, 924 (1967), for the legal position that a meritorious grievance can be declined by a union for monetary reasons; namely lack of funds to pursue a grievance vigorously.

At page 209 of *Vaca v. Sipes*, 386 U.S. 171 (1967), the following is quoted from Judge Black's dissenting opinion:

> The Court suggests three reasons for giving the union this almost unlimited discretion to deprive injured employees of all remedies for breach of contract. The first is that "frivolous grievances" will be ended prior to time-consuming and costly arbitration. But here no one, not even the union, suggests that Benjamin Owens' grievance was frivo-

lous. The union decided not to take it to arbitration simply because the union doubted the chance of success. Even if this was a good-faith doubt, I think the union had the duty to present this contested, but serious, claim to the arbitrator whose very function is to decide such claims on the basis of what he believes to be right. Second, the Court says that allowing the union to settle grievances prior to arbitration will assure consistent treatment of "major problem areas in the interpretation of the collective bargaining contract." But can it be argued that whether Owens was "fit to work" presents a major problem in the interpretation of the collective bargaining agreement? The problem here was one of interpreting medical reports, not a collective bargaining agreement, and of evaluating other evidence of Owens' physical condition. I doubt whether consistency is either possible or desirable in determining whether a particular employee is able to perform a particular job. Finally, the Court suggests that its decision "furthers the interest of the union as statutory agent." I think this is the real reason for today's decision which entirely overlooks the interests of the injured employee, the only one who has anything to lose. Of course, anything which gives the union life and death power over those whom it is supposed to represent furthers its "interest." I simply fail to see how the union's legitimate role as statutory agent is undermined by requiring it to prosecute all serious grievances to a conclusion or by allowing the injured employee to sue his employer after he has given the union a chance to act on his behalf.

Based upon the analysis of Justice Black's dissenting opinion of the three reasons advanced by the majority opinion in *Vaca v. Sipes*, supporting a union's unlimited discretion in disposing of grievances, Stahulak's cause

of action was not frivolous which would provide the union with the argument that a "frivolous grievance" could be ended prior to time-consuming and costly arbitration as the Circuit Court determined that Stahulak's cause of action was not frivolous, but meritorious.

The Circuit Court ruled that the arbitrator's award exceeded the arbitrator's authority in extending the probationary period of the petitioner with the intent to deprive the petitioner to achieve the status of a permanent employee that would require a hearing and cause prior to dismissal.

As a result, the Circuit Court recognized that the petitioner had achieved the status of a permanent employee when the City of Chicago reinstated the petitioner by placing him on administrative leave and by paying his salary for the entire month resulting in the petitioner achieving the status of a permanent employee.

Likewise, the second reason advanced by the majority opinion of *Vaca v. Sipes* in supporting the Union was that the Union must be provided with the opportunity to settle grievances prior to arbitration and even after arbitration to ensure consistent treatment of "major problem areas in the interpretation of the collective bargaining contract."

However, in this matter, the question is not the interpretation of the collective bargaining agreement to ensure consistent treatment of major problem areas, when such consistent treatment would result in legalizing an arbitrator's award contrary to public policy, which would be contrary to existing court decisions. *American Federation of State, County & Municipal Employees v.*

State of Illinois, 124 Ill.2d 246, 160, 529 N.E.2d 534 (1988), *Rauh v. Rockford Products Corp.*, 143 Ill.2d 377, 393, 574 N.E.2d 636 (1991), *Harris v. Allied American Insurance Co.*, 152 Ill.App.3d 88, 90, 504 N.E.2d 151 (1987).

Also, the third reason advanced by the majority opinion of *Vaca v. Sipes*, that its decision "furthers the interest of the union as statutory agent," overlooks the interest of the injured employee, the only one who has anything to lose, based upon the observation of Justice Black's dissent.

Consistent with Justice Black's dissent in *Freeman v. Local Union No. 135 Chauffeurs, Teamsters, Warehousemen & Helpers*, 746 F.2d 1316, 1322 (7th Cir. 1984), an employee, such as the petitioner herein, should not be deprived "of an opportunity to petition a circuit court to vacate an arbitration award solely because he or she sought to work with his or her union in the first instance, and the union declined to further prosecute the action after the arbitration award."

In citing *Freeman v. Local Union No. 135 Chauffeurs, Teamsters, Warehousemen & Helpers*, the following pertinent language is quoted from the *Svoboda v. Department of Mental Health* decision, at 373:

> . . . the union at this stage is not under the same obligation that it is to bring the grievance in the first place. Thus, to hold that an individual employee has no standing to seek vacation of an arbitration award when the employee was represented by his or her union at the outset would have the effect of dissuading an employee from working with the union at the initiation of grievance proceedings.

For purposes of emphasis, in this instance, since the petitioner had exhausted his remedies via the arbitrator's award, the petitioner has the right to file the petition to vacate the arbitrator's award on the basis that the union collective bargaining agreement does not give the union the exclusive right to seek judicial review to vacate such an award when, in this matter, the petitioner is alleging that the arbitration award violates public policy.

That the arbitrator's award violates public policy is clearly demonstrated by the transcript of proceedings of September 13, 1995, page 7 (08), when Judge Berman of the Circuit Court observed:

> THE COURT: Well, the party who was affected by this and who certainly in my view has a right to bring this, even though you brought up he isn't a proper party, but he is absolutely a party, these proceedings were based on not only his, but two others who are not before me, rights to employment. And it just seems to me that the arbitrator went far beyond what authority he or she had to issue this kind of an order. And furthermore, you say in there as long as it's even handed. It's not even handed. How can it be even handed when he says to the City "you did it wrong, I agree you did it wrong, now I'm going to freeze everything to allow you to go back and do it right"? How is that even handed?

Consequently, the petitioner should not be prevented from having an individual access to the remedy that he is seeking wherein he has a personal stake in the arbitrator's award; that is, his job.

Because the petitioner was considered by Circuit Court Judge Berman as a third-party beneficiary to the collective bargaining agreement between the union and

employer herein, and because the petitioner has a personal stake in the arbitrator's award, that does not mean that an individual union member surrendered his right to protect his job in becoming a union member in order to make a union viable by having it represent the interest of all of its members, page 373 of the *Svoboda* opinion.

Under the liberty interest concept of the Fifth and Fourteenth Amendments to the United States Constitution, such a right cannot and should not be surrendered as it protects the individual from a loss of a job that is not based upon a decision for cause, but upon a decision that violates public policy.

As it is eloquently stated in *Arnett v. Kennedy,* 416 U.S. 134, 157, 40 L.Ed.2d 15, 35, 94 S.Ct. 1633, 1646 (1974), a person's employment does have liberty protections under the Constitution of the United States, "subspecies of the right of the individual 'to enjoy those privileges long recognized * * * as essential to the orderly pursuit of happiness by free men.'"

CONCLUSION

For the above-stated reasons, this Court should grant this Petition for Writ of Certiorari.

Respectfully submitted,

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